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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	COMPLAINT
	:	
v.	:	03 Civ.
	:	
THE SHUBERT ORGANIZATION, INC.,	:	
THE BELASCO THEATRE CORP., and	:	
THE LYCEUM THEATRE CORP.,	:	
	:	
Defendants.	:	
-----X		

Plaintiff United States of America, by its attorneys John Ashcroft, Attorney General of the United States of America, and James B. Comey, United States Attorney for the Southern District of New York, alleges for its complaint as follows:

I. PRELIMINARY STATEMENT

1. The United States of America files this complaint to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12181 et seq., and the Department of Justice regulations implementing Title III of the ADA, 28 C.F.R. Part 36 (the "Regulations"), against defendants the Shubert Organization, Inc., and its wholly owned subsidiaries, the Belasco Theatre Corp. and the Lyceum Theatre Corp. (collectively "Shubert " or "Defendants").

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B), and 28 U.S.C. §§ 1331 and 1345.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), as the Defendants' acts of discrimination alleged herein occurred in this District.

III. THE PARTIES

4. Plaintiff is the United States of America.

5. Defendant Shubert Organization, Inc., owns and operates the following live action theatres in New York City: the Ambassador, located at 219 West 49th Street; the Barrymore, located at 243 West 47th Street; the Booth, located at 225 West 45th Street; the Broadhurst, located at 235 West 44th Street; the Broadway, located at Broadway at 53rd Street; the Cort, located at 138 West 48th Street; the Golden, located at 252 West 45th Street; the Imperial, located at 235 West 44th Street; the Longacre, located at 220 West 48th Street; the Plymouth, located at 236 West 45th Street; the Royale, located at 242 West 45th Street; the Shubert, located at 225 West 44th Street; and the Winter Garden, located at 1634 Broadway. The Shubert Organization, Inc., is subject to Title III of the ADA.

6. Defendant Belasco Theatre Corp. owns and operates the Belasco theatre located at 111 West 44th Street, New York, New York. The Belasco Theatre Corp. is subject to Title III of the ADA.

7. Defendant Lyceum Theatre Corp. owns and operates the Lyceum theatre located at 149 West 45th Street, New York, New York. The Lyceum Theatre Corp. is subject to Title III of the ADA.

IV. THE THEATRES

8. The Ambassador, the Barrymore, the Belasco, the Booth, the Broadhurst, the Broadway, the Cort, the Golden, the Imperial, the Longacre, the Lyceum, the Plymouth, the Royale, the Shubert, and the Winter Garden (collectively the “Theatres”) are places of public accommodation within the meaning of Title III of the ADA because their operations affect commerce, and they are facilities that include theatres, or other places of exhibition or entertainment, and bars or concessions that serve food, drink, or merchandise. The Defendants are public accommodations within the meaning of Title III because they own, operate or lease the Theatres, bars and concessions. 42 U.S.C. § 12181(7)(B) and (C); 28 C.F.R. § 36.104.

9. The Theatres are facilities used for the rehearsal and performance of live theatre entertainment. They include, among other things, lobbies, ticket windows, ticket offices, dressing rooms, backstage areas, stages, orchestra pits, seating on orchestra, mezzanine and/or balcony levels, lounges with bars and concessions, and toilet rooms.

10. The Ambassador has a seating capacity of approximately 1088 persons depending on the nature of the theatre production.

11. The Barrymore has a seating capacity of approximately 1096 persons depending on the nature of the theatre production.

12. The Belasco has a seating capacity of approximately 973 persons depending on the nature of the theatre production.

13. The Booth has a seating capacity of approximately 781 persons depending on the nature of the theatre production.

14. The Broadhurst has a seating capacity of approximately 1133 persons

depending on the nature of the theatre production.

15. The Broadway has a seating capacity of approximately 1743 persons depending on the nature of the theatre production.

16. The Cort has a seating capacity of approximately 809 persons depending on the nature of the theatre production.

17. The Golden has a seating capacity of approximately 804 persons depending on the nature of the theatre production.

18. The Imperial has a seating capacity of approximately 1415 persons depending on the nature of the theatre production.

19. The Longacre has a seating capacity of approximately 1090 persons depending on the nature of the theatre production.

20. The Lyceum has a seating capacity of approximately 701 persons depending on the nature of the theatre production.

21. The Plymouth has a seating capacity of approximately 1079 persons depending on the nature of the theatre production.

22. The Royale has a seating capacity of approximately 1078 persons depending on the nature of the theatre production.

23. The Shubert has a seating capacity of approximately 1460 persons depending on the nature of the theatre production.

24. The Winter Garden has a seating capacity of approximately 1498 persons depending on the nature of the theatre production.

V. ENFORCEMENT BY ATTORNEY GENERAL

25. Upon information and belief, there are persons with disabilities who have been injured by Defendants' failure to make the Theatres accessible to people with disabilities.

26. There is reasonable cause to believe that the Defendants have engaged in a pattern or practice of discrimination under the ADA and that this action raises an issue "of general public importance." 42 U.S.C. § 12188(b)(1)(B)(i), (ii).

VI. CLAIMS FOR RELIEF

CLAIM I

READILY ACHIEVABLE BARRIER REMOVAL

27. There are numerous architectural barriers that have prevented or restricted access to the Theatres by individuals with disabilities in that the Theatres' services, features, elements and spaces have not been readily accessible to, or usable by, individuals with disabilities, as specified by the Regulations. 28 C.F.R. §§ 36.304, 36.308(a); Standards for Accessible Design, 28 C.F.R. Part 36, App. A (the "Standards").

28. Architectural barriers to access which have existed at the Theatres include, but are not limited to, the following:

- a. The Theatres have not had a reasonable number of wheelchair seating locations that are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, and have not provided companion seating next to the wheelchair seating locations. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304 and 36.308; 28 C.F.R. Part 36, App. A, §§

4.1.3(19)(a) and 4.33.

b. The Theatres have not had wheelchair seating locations that are readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, that are located so that they are dispersed throughout the seating areas, provide lines of sight and choice of admission prices comparable to those for members of the general public, that adjoin an accessible route that also serves as a means of emergency egress; and that adjoin an accessible route to performing areas, including the stage, dressing rooms and orchestra pit. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304 and 36.308; 28 C.F.R. Part 36, App. A, §§ 4.1.3(19)(a) and 4.33.

c. The Theatres have not had a reasonable number of seats that have no armrests or that are equipped with folding or removable armrests that are suitable for transfer from a wheelchair ("aisle transfer seating"). 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304 and 36.308; 28 C.F.R. Part 36, App. A, § 4.1.3(19)(a).

d. There have not been accessible routes connecting elements and spaces within the Theatres because, among other things, where changes in level occur, no accessible means of vertical access has been provided. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §

36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3, 4.3, 4.5, and 4.8.

e. The doors in certain areas of the Theatres, as a result of, among other things, non-compliant hardware, threshold height, door width, and opening force have not been readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.2, 4.1.3(7), and 4.13.

f. The Theatres' restrooms have not been readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3(11) and 4.22.

g. The Theatres' drinking fountains and public telephones have not been readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, §§ 4.1.3 (10), 4.1.3(17), 4.15, and 4.31.

h. The Theatres' ticket windows, and souvenir, food, and beverage concessions have not been readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, because, among other things, they are not equipped with accessible counters and are not located on accessible

routes. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, § 7.

i. The Theatres' stages, backstage, orchestra pits, dressing rooms, and other spaces have not been readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, § 4.33.5.

29. Upon information and belief, it is readily achievable for Defendants to remove the architectural barriers to access identified in paragraph 28. By failing to remove barriers to access to the extent it is readily achievable to do so, Defendants have violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iv) and 28 C.F.R. § 36.304.

CLAIM II

READILY ACHIEVABLE ALTERNATIVES TO BARRIER REMOVAL

30. In the alternative, if it is not readily achievable to remove all of the barriers to access set forth in paragraph 28, Defendants must provide readily achievable alternatives to barrier removal as required by 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305.

31. Upon information and belief, there are readily achievable alternatives to barrier removal that Defendants could have undertaken and must undertake in order to make the goods, services and facilities offered at the Theatres accessible to individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. §§ 36.305 and 36.308.

CLAIM III

REASONABLE MODIFICATIONS TO POLICIES, PRACTICES, AND PROCEDURES

32. Upon information and belief, Defendants have failed to make reasonable modifications to their policies, practices and procedures to make the goods, services, and facilities of the Theatres available to individuals with disabilities, as specified by Title III of the ADA and the Regulations. 42 U.S.C. §§ 12182(b)(1)(A)(ii), 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

33. Upon information and belief, Defendants have afforded, and continue to afford, individuals with disabilities who wish to purchase tickets to wheelchair seating locations an opportunity to purchase tickets that is unequal to that afforded to others, by utilizing administrative methods that have the effect of discriminating on the basis of a disability. 42 U.S.C. §§ 12182(b)(1)(A)(ii), 12182(b)(1)(D)(i); 28 C.F.R. §§ 36.202(b), 36.204.

34. Upon information and belief, Defendants' non-compliant policies, practices and procedures include, but are not limited to, failing to modify their sales policies and practices to ensure that wheelchair, companion and aisle transfer seating is dispersed throughout the seating spaces with a choice of lines of sight comparable to those offered to members of the general public. 28 C.F.R. §§ 36.308(a)(ii)(A) & (B), Part 36, App. A, § 4.33.3.

CLAIM IV

SECTION 302 OF THE ADA

35. By failing to remove architectural barriers to access where it is readily achievable to do so; by failing to use readily achievable alternatives to barrier removal where barrier removal is not readily achievable; by failing to modify reasonably policies, practices and

procedures to make the goods and services offered at the Theatres accessible to individuals with disabilities; by failing to utilize administrative methods that afford people with disabilities who wish to purchase tickets to accessible seating locations an opportunity to purchase tickets that is equal to that afforded to others; by failing to provide wheelchair seating that provides a choice of lines of sight comparable to those for members of the general public; by failing to operate the Theatres so that the policies, procedures and administrative methods used would not discriminate against individuals with disabilities; and for all other actions or omissions resulting in discrimination against people with disabilities, as specified by Title III of the ADA and the Regulations, Defendants have discriminated against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the Theatres in violation of Title III of the ADA, 42 U.S.C. § 12182(a); 28 C.F.R. §§ 36.305, 36.308.

36. Upon information and belief, there is reasonable cause to believe that Defendants have engaged in a pattern or practice of discrimination under the ADA that raises an issue of general public importance. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

VII. PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court enter judgment that:

A. Declares that Defendants have violated Title III of the ADA, 42 U.S.C. §12182, at the Theatres (1) by failing to provide wheelchair, companion and aisle transfer seating pursuant to 28 C.F.R. § 36.308; (2) by failing to remove architectural barriers to access pursuant to 28 C.F.R. § 36.304; (3) by failing to provide alternatives to barrier removal pursuant to 28

C.F.R. § 36.305; (4) by failing to modify policies, practices and procedures when necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities pursuant to 28 C.F.R. § 36.302; (5) by failing to utilize administrative methods that afford people with disabilities who wish to purchase tickets to accessible seating locations an opportunity to purchase tickets that is equal to that afforded to others pursuant to 42 U.S.C. § 12182 ; 28 C.F.R. §§ 36.202, 36.204; (6) by failing to provide people with disabilities seats that have lines of sight comparable to those offered to members of the general public pursuant to 28 C.F.R. § 36.308; and (7) by discriminating against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the Theatres pursuant to 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201;

B. Orders Defendants to provide a reasonable number of accessible wheelchair locations, aisle transfer seating locations and companion seating locations that are dispersed throughout the seating area, and that provide lines of sight comparable to those for members of the general public pursuant to 42 U.S.C. §§ 12182(b)(2)(A)(iv), 12188(b)(2)(A); 28 C.F.R. § 36.308;

C. Orders Defendants to remove all architectural barriers pursuant to 42 U.S.C. §§ 12182(b)(2)(A)(iv), 12188(b)(2)(A); 28 C.F.R. § 36.304 and 28 C.F.R. Part 36, App. A, including, but not limited to, removing the architectural barriers to access set forth in paragraph 28;

D. Orders the Defendants to provide readily achievable alternatives to barrier removal in all instances, if any, where it is not readily achievable to remove architectural barriers pursuant to 42 U.S.C. §§ 12182(b)(2)(a)(v), 12188(b)(2)(A); 28 C.F.R. § 36.305;

E. Orders Defendants to make reasonable modifications to their policies, practices and procedures, including ticketing policies, practices and procedures, when necessary to afford people with disabilities equal access to the goods, services, facilities, privileges, advantages or accommodations provided at the Theatres pursuant to 42 U.S.C. §§ 12182(b)(2)(A)(ii), 12188(b)(2)(A); 28 C.F.R. §§ 36.302, 36.308;

F. Awards monetary damages to persons who have been injured by Defendants pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2);

G. Assesses a civil penalty against the Defendants in an amount authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), in order to vindicate the public interest; and

H. Orders such other appropriate relief as the interest of justice may require.

Dated: New York, New York
September __, 2003

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
AB, an infant, by her aunt and legal guardian, CD; :
EF; GH, an infant, by her father and natural :
guardian IJ; KL; and CATHY CONLEY, :
:
Plaintiffs, :
:
- against - :

RHINEBECK CENTRAL SCHOOL DISTRICT, : COMPLAINT IN
and THOMAS MAWHINNEY, : INTERVENTION
:
Defendants. : 03 Civ. 3241 (SCR) (GAY)

-----X
UNITED STATES OF AMERICA, :
:
Plaintiff-Intervenor, : JURY DEMANDED
:
- against - :

RHINEBECK CENTRAL SCHOOL DISTRICT, :
:
Defendant. :
-----X

The United States of America, Plaintiff-Intervenor, alleges for its complaint in
intervention as follows:

PRELIMINARY STATEMENT

1. The United States files this complaint in intervention to redress discrimination on the basis of sex in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88. Title IX prohibits recipients of Federal financial assistance from discriminating on the basis of sex in educational programs or activities.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1345.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the defendant Rhinebeck Central School District (the "District") is located within the Southern District of New York and the claims alleged in this complaint arose in this District.

PARTIES

4. Plaintiffs AB, EF, GH, and KL are current or former students of Rhinebeck High School (the "High School"). Plaintiffs AB, EF and GH are citizens of New York. Plaintiff KL was a citizen of New York at the time of the events alleged in this complaint and is currently a citizen of Florida.

5. Defendant District is organized, and exists pursuant to, the laws of the State of New York and is responsible for the administration of educational services for all students enrolled in the District, including students at the High School.

6. The District is a recipient of Federal financial assistance and therefore is subject to Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688.

PROCEDURAL BACKGROUND

7. On May 9, 2003, Plaintiffs AB, EF, GH, and KL, among others, filed a complaint in this Court against the District and Thomas Mawhinney, then the Principal of the High

School, alleging that the District and Mawhinney were in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88, as a result of sexual harassment of AB, EF, GH, and KL, among other allegations. On August 29, 2003, Plaintiffs amended their complaint to include a claim against the District under the Fourteenth Amendment to the United States Constitution.

FACTUAL BACKGROUND

8. Over the ten year period from 1993 through 2003, Mawhinney subjected Plaintiffs AB, EF, GH, and KL and many other female students at the High School to unwelcome sexual harassment that constituted discrimination on the basis of sex.

9. The sexual harassment to which Plaintiffs and many other female students at the High School were subjected was severe, pervasive and objectively offensive.

10. Mawhinney's behavior with respect to Plaintiffs AB, EF, GH, and KL and many other female students at the High School created a hostile educational environment.

11. District officials with authority to rectify the situation received actual notice of incidents in which Mawhinney sexually harassed the Plaintiffs AB, EF, GH, and KL and many other female students at the High School.

12. District officials with authority to rectify the situation had actual notice of, and were deliberately indifferent to, the sexual harassment to which Plaintiffs and many other female students at the High School were subjected.

13. The District's deliberate indifference prevented the Plaintiffs and other female students at the High School from enjoying the educational benefits and opportunities provided by the District.

CLAIM FOR RELIEF

14. The United States realleges and herein incorporates by reference the allegations set forth in paragraphs 8 through 13 above.

15. The District's deliberate indifference to known sexual harassment to which Plaintiffs AB, EF, GH, and KL and other female students at the High School were subjected violates Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88.

16. Unless enjoined by this court, the District will continue to violate Title IX.

17. The United States seeks intervention in this lawsuit in order to seek relief to ensure that the District will operate a school system that provides an educational environment that is free of sexual harassment for its students and is in compliance with federal law.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court:

a. Declare that the District has discriminated on the basis of sex by failing to address, prevent and remedy, sexual harassment, and in so doing failed to provide the benefits of its educational activities and services to Plaintiffs AB, EF, GH and KL and other female students at the High School in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88.

b. Permanently enjoin the District, its officers, agents, employees, successors, assigns, and all persons in active concert or participation with the District from all unlawful discrimination against school-age children on the basis of sex.

c. Order the District to develop, adopt, and timely implement a comprehensive plan that will ensure a discrimination-free educational environment for all its students.

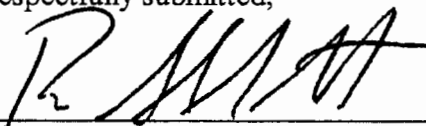
d. Order the District to file a report annually with the Court for three years detailing the implementation of its plan.

e. Provide such relief as is necessary to compensate Plaintiffs AB, EF, GH and KL for the discrimination to which they were subjected.

f. Grant such additional relief as the needs of justice may require.


Respectfully submitted,

By:

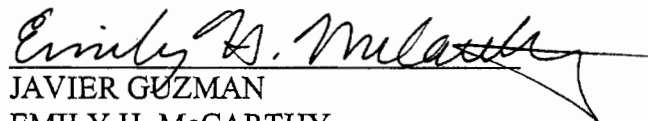

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CERTIFICATE OF SERVICE


I, HEIDI A. WENDEL, Assistant United States Attorney for the Southern District of New York, hereby certify that on March 18, 2004, I caused a copy of the attached Notice of Motion and attached Complaint in Intervention to be served by regular first-class mail upon the following:

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Dated: New York, New York
March 18, 2004


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